

ON BEHALF OF
THE RAINBOW PUSH COALITION
AND
REVEREND JESSE L. JACKSON, SR.

STATEMENT OF

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ON THE
TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL (TWIC)
BEFORE THE
COAST GUARD AND MARITIME TRANSPORTATION SUBCOMMITTEE
U.S. HOUSE OF REPRESENTATIVES

JULY 12, 2007
2167 RAYBURN HOUSE BUILDING
10:00 a.m.

Good morning, Chairman Cummings, Ranking Member LaTourette and members of the Subcommittee. Thank you for the opportunity to speak on behalf of The Rainbow Push Coalition and Rev. Jesse L. Jackson, Sr. Most important, I am also speaking on behalf of over 100 documented men and women who were employed in America's transportation industry, on the rail yards in Chicago, before they were terminated, due to a "psuedo-TWIC" program created by the railroads.

I have very little knowledge of the TWIC legislation per se and even less knowledge of the maritime industry. But, I do have knowledge of the negative impact a background check program can have on America's workers in the transportation industry. I am here to provide you with our expectation of the *serious* problems that are most likely to occur if certain TWIC standards are not more carefully defined *before* they are implemented. The lack of such standards in the rail industry has *already* adversely affected its contractor vendors and their employees. We hope you will look at the effect the railroads' "psuedo-TWIC" program had on the industry and use the case to ensure that the same problems will not arise when TWIC is eventually implemented. The railroads implemented this "psuedo-TWIC" program as early 2004. The railroads took the recommended action items listed under the Hazmat Program and applied the same or similar standards to the employees of the railroads' contractors, without giving the consequences much thought. Men and women, who had worked on the yards for as many as 13 years, were forced to submit to a background check in order to receive a badge, granting them access to the railroads' property. If the employee did not consent to the check or if they failed the check, they were denied access. The result was a large amount of America's transportation workers (not only convicted felons but victims of identity theft) were left without a job, without answers, and without an appeals or waiver process.

Again, I am here to forewarn you of the problems to anticipate if a bit more thought is not given to several aspects of the program before its implementation: 1) Crimes, 2) Reporting, and 3) Appeals/Waivers Processes. We believe a bit more time must be taken to clarify the TWIC program; otherwise, the negative impact on America's maritime workers – and our country's ability to effectively compete in the worldwide market in this important sector is – is sure to be profound.

1) CRIMES

Members of Congress, none of the 911 participants were American citizens. And to expound upon that, there is no evidence of American citizens with felony convictions as a class or population engage in espionage or terrorism. A look at America's history shows hiring convicted felons in the transportation industry has long been a common practice. Even movies depict African American inmates working on the railroads in a "chain gang" or Mafia-related ex-cons working at the ports on the East Coast. In fact, many of the people I represent went directly to the railroad or through a re-entry program, after their release from incarceration, because they *knew* they could get a job there. This is a similar belief at America's ports.

None of those whom I represent committed TWIC's "permanent disqualifying offenses" of crimes of terrorism, espionage or treason. Instead, they committed crimes ranging from murder to possession of drugs or a firearm. We are not minimizing the severity of these crimes; however, many of these workers are victims of their environment in which

they grew up. Geography is the main culprit. They grew up in poor neighborhoods, “the ghetto” where survival sometimes causes good men and women to do very bad things. Many of the Railroad workers I represent lack a formal education; many do not even have a GED. Unfortunately, these men and women were left with little or no options before becoming a “convicted felon” and even less options once released from prison. A felony conviction, in most states, follows a person for the rest of his or her life. We understand the need for a screening process and do not take issue with the underlying purpose – which is a valid one. We do, however, take issue with the hopelessly vague and undefined way in which it is being implemented. The “interim disqualifying offenses” must be very clearly defined. The majority of the felons I represent would fall in this category because of their convictions for possession of drugs and/or firearms. But what about my client who was convicted of *misdemeanor* possession of a firearm, which is a sealable offense in the state of Illinois? He was disqualified from the railroad because of a misdemeanor offense committed many years prior. Perhaps a time limitation for those convicted of misdemeanors would be appropriate. And, one of the largest studies ever on alcohol and drug addiction was released less than two weeks ago, showing that 30% of Americans suffer from alcohol or drug addiction. Should we bar all those with possession of drugs from any gainful employment? Many do get well with treatment. Those that do deserve a chance for gainful employment. Yet, simple possession charges – with no intent to sell or distribute – can also bar employment in our nation's ports and other transportation industries.

2) REPORTING

The reporting of an applicant's criminal background is a *most essential element* to this program. Background checks must be done more thoroughly. In almost all of the cases I have reviewed, the screener looked at an applicant's record superficially and made a swift determination without looking further into a record. For example, one client was originally charged with Felony possession with intent to deliver drugs; however, the charge was later amended to a misdemeanor possession of cannabis of which he pleaded guilty to and served probation. This man, however, was barred from the railroad's property because the report was not 100% complete. It was reported that he was charged with a felony and found guilty, which was true, but only partially true. A *deeper* review of the record would have revealed the amended charge and this man probably would not have been barred from the property. Instead, he was out of work for almost one month while he fixed the screener's error, a burden which was placed on him.

This process may be more time consuming but if the cost is on the applicant, he must be entitled to a *thorough* background check and it should not be his duty to prove a reported inaccuracy that is visible to the original screener.

Another problem is that the review of an applicant's FBI records and fingerprints is not necessarily thorough enough. Often times, the state police or county court does not send completed information on a case to the FBI. For example, a rail worker was merely *held* on a murder charge and released two days after his arrest. The arrest for “murder” was immediately submitted to the FBI; however, his release was not submitted. This man was barred from the employment at the Railroad because his report from the FBI came back with a “murder” hit. If the screener had reviewed this record with the arresting agency and the corresponding county court, it would have been determined

that he was never even charged with the crime! Yet, this type of problem is commonplace in the Rail industry and we urge you to consider it.

Although the Fair Credit Reporting Act does not apply to TWIC, we suggest a FCRA-like standard be applied to those who are denied the TWIC card. A copy of one's record shall be given to him if he is going to be denied employment because the misreporting of information is so prevalent. Again, the applicant had paid for the check; therefore, he should be entitled to receive the product and review the report for any inaccuracies.

3. APPEALS/WAIVER PROCESS

All citizens of this country shall be afforded equal protection of the laws; however, this fundamental right was stripped from the railroad's contractor employees because they were not given an opportunity for due process when they were barred from the railroads property.

The railroads did attempt to create an appeals process but because there was no *original standard* of disqualifying offenses, there was no formula for a proper appeals process.

The terminated men simply given letters of denial from the property, similar to how TWIC will operate. They were not given a copy of their background check. They were left with no guidance as to how to get their job back. Most were told they could write a letter of appeal and submit back to the railroad; but there were many who did not know of this option.

Members of Congress, many of these employees will not be able to properly read and write. Rainbow Push and I worked together at types out about 30 appeals for the men because they were unable to do it themselves.

Some men received a call immediately, allowing them back onto the property; others are still waiting, 6 months later, for a response on their appeal. One woman, who was a victim of identity theft, was able to return to work after waiting over 30 days for her appeal to be processed. This woman is a single mother of three children. She was then barred from the property again, without explanation, and then brought back to work after being out for about 3 more weeks.

Some were told they could only submit their appeal via email while others were told it could only be submitted via fax. The TWIC standard lists one address where an appeal is to be sent. Will this be the single location where an appeal is actually heard? Will an applicant from California have to travel cross-country for an appeal? *There must be a fair and effective appeal process in place before TWIC is implemented.*

We represent men who have been on these yards for over a decade. The majority of the workers have several years work experience without incident. These workers should have been able to request a waiver, reviewed by an committee independent from the railroad, within a reasonable time frame.

CONCLUSION

In Conclusion, before TWIC is implemented, we strongly recommend 1) the list of disqualifying offenses be reviewed with great scrutiny and those crimes be related to national crimes of security, 2) the procedure by which background checks are done involve a more detailed review of an applicant's criminal record before being denied access to the yard, and 3) a fair and affective appeals process be established so that applicants denied a job are still afforded due process under the Constitution of the United States. I will answer your questions at this time. Thank you.